



CON 244
Construction Contracting
Lesson 7
Student Guide

May 2016

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Lesson 7 Invoices, Payments and Closeout

Overview



Questions to ponder:

What is the fundamental problem associated with contracts that are not closed out and their funds expire?

Why is a construction progress payment subject to the prompt payment act?

What is the purpose of a punch list?

Can I do a second punchlist?

Lesson Details

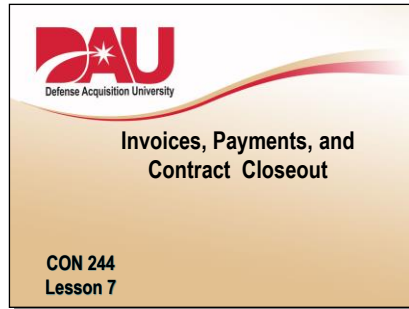


Terminal Learning Objective

- Given a construction contractor's invoice, verify for construction progress payment, and at contract conclusion, conduct appropriate construction contract closeout.

Lesson Title	Invoices, Payments and Closeout
Terminal Learning Objective	Given a construction contractor's invoice, verify for construction progress payment and at contract conclusion describe how to conduct appropriate construction contract closeout.
Enabling Learning Objectives	<ul style="list-style-type: none"> • Evaluate the process for reviewing a construction schedule of prices and invoice processing. • Identify causes for construction retainage, withholding, and assessment of liquidated damages. • Identify procedures for subcontractor notice of nonpayment and overpayment of the prime contractor. • Determine the amount of the progress payment due a contractor, the steps in processing the invoice, and identify any special costs. • Recognize the necessity of construction punchlists, beneficial occupancy, warranty, and turnover. • Identify the unique procedures for construction contract closeout and contractor evaluation.
Time Required	3 hours
Method of Instruction	Lecture, plus Exercise
References, Supplemental Readings	SCAN FAR 4.804, 32.503-3, 52.211-12, 52.232-5, 52.232-16, 52.232-27, 52.236-11, 52.246-21, DFARS 204.804, 236.570 READ Lesson 7, Invoices and Contract Closeout
Evaluation Method	Student performance will be assessed on course exam and Capstone Case Study.

Introduction



Introduction

In this chapter we will discuss and practice processing a contractor's payment request. Upon completion of payments, we will cover project completion and the associated documentation to successfully close a contract

Consider the following scenario:

This is your first week in the construction contract office. The Contracting Officer gives you a construction invoice to process.

What does all this mean?

What payments previously received?

Progress to date?

The Construction Inspector walks by. "Oh, you have that invoice? Here,..." as he hands you more documentation, "disregard what the contractor says about progress. This is the progress that has been made on the project." Disregard what the contractor has written? Why? How?

Someone else comes by and tells you to keep retainage and that probably LDs will be assessed on this invoice. Retainage? LDs?

How many and how much and how will I know?

The telephone rings and the organization's Labor Advisor informs you to withhold money from the invoice. Withhold? Because of what? How do I do that?

The telephone rings again and a subcontractor who's invoice that you are supposed to have processed and paid thru the prime informs you they have not been paid. Now what?

Is this what a construction contract office is like always?

Payments Under Fixed Price Construction Contracts

DAU	Payments Under Fixed-Price Construction
<ul style="list-style-type: none"> • FAR 52.232-5 • Monthly payments based on estimates of <u>progress</u> • Amount requested to be <u>supported</u> by <u>itemized listing</u> of work items completed • Ktr will <u>refund unearned</u> amounts (due to non-conformance with contract requirements) • Government may <u>hold retainage</u> (10% max) for unsatisfactory progress • Ktr reimbursed for performance and payment <u>bond premiums</u> • Total amount due paid in <u>final payment</u> • Ktr <u>certifies</u> payment request is <u>accurate and complete</u>. 	

Introduction

Construction uses a special payments clause FAR 52.232-5. This form of progress payment is excluded from the definition contract financing payments (See FAR 32.001) and is therefore subject to the provision of FAR Subpart 32.9 Prompt Payment.

In accordance with FAR 52.232-5, Payments under Fixed-Price Construction Contracts:

- The Government will make monthly payments on estimates of progress
- Contractor amount requested shall be supported by itemized listing of work items completed:
 - Work performed by each subcontractor identified
 - Contractor will refund unearned amounts
 - Government may hold retainage
 - Title for all materials and work passes to Government as progress payments are made
- Contractor is reimbursed for bond premiums
- Government pays the Contractor total amount due in final payment

This may seem odd but it remains a fact that there is an “implied acceptance” for progress made on a construction contract – you cannot take the concrete back out of the ground once installed.

52.232-5 (f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as --

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

So it is that progress and quality control are intertwined. The government should retain/withhold for unsatisfactory performance as required and pay what is due timely within the requirements of FAR 52.232-5.

FAR 32.103 -- Progress Payments Under Construction Contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

Payments Under Fixed- Price Construction FAR 52.232-5

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

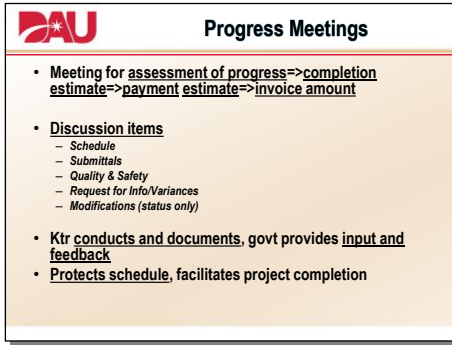
- (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.*
- (ii) A listing of the amount included for work performed by each subcontractor under the contract.*
- (iii) A listing of the total amount of each subcontract under the contract.*
- (iv) A listing of the amounts previously paid to each such subcontractor under the contract.*
- (v) Additional supporting data in a form and detail required by the Contracting Officer.*

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if --

- (i) Consideration is specifically authorized by this contract; and*
- (ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.*

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

Progress Meetings

A presentation slide titled "Progress Meetings" with the DAU logo in the top left corner. The slide contains a bulleted list of topics for discussion in progress meetings.

- Meeting for assessment of progress=>completion estimate=>payment estimate=>invoice amount
- Discussion items
 - Schedule
 - Submittals
 - Quality & Safety
 - Request for Info/Variations
 - Modifications (status only)
- Ktr conducts and documents, govt provides input and feedback
- Protects schedule, facilitates project completion

Progress Meetings

As a minimum, a monthly progress meeting should be conducted to determine the appropriate completion estimates and therefore, payment amount.

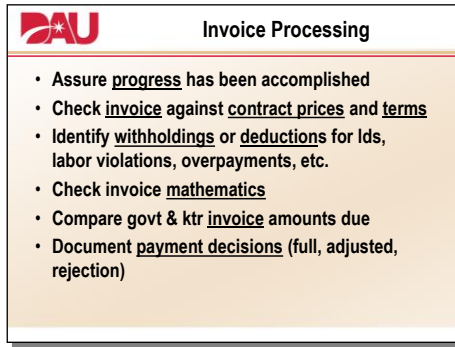
Many agencies have implemented a more frequent meeting.

The contractor will conduct the meeting discussing five key elements:

- Schedule
- Submittals
- Quality & Safety
- Requests for Information/Variance
- Modifications (status only)

By discussing these 5 elements, a comprehensive assessment of the progress can be accomplished. Both the contractor and government can use the meeting and meeting minutes to develop and readily support a payment estimate and invoice.

Invoice Processing



Invoice Processing

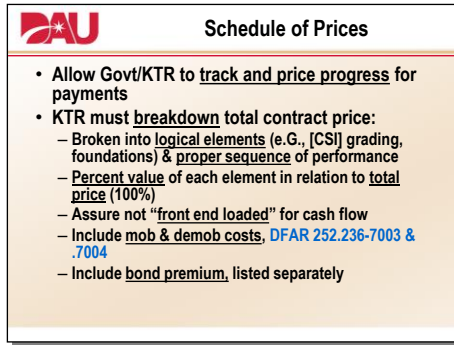
The contractor submits an invoice and to receive payment the invoice must contain all necessary documentation to support the amount requested.

Invoice processing includes the following actions:

1. Check to assure that progress for which the invoice covers has been accomplished.
2. Check the invoice against the contract prices and terms;
3. Identify withholdings or deductions for:
 - Liquidated damages
 - Retainage
 - Collection of overpayment
 - Department of Labor violations
4. Check the mathematical computations of the invoice for accuracy;
5. Compare the amount of the contractor's invoice with the Government's estimate of the amount of payment due;
6. Contact the contractor to obtain an explanation for any differences between the amount of the submitted invoice and the amount the Government estimates declare;
7. Where necessary, document the decision to: Pay in full, pay after certain deductions and withholdings, after written notice to the contractor or reject the invoice and return it to the contractor for correction and resubmission. Set up tickler files and periodically check with payment office.

The contractor must certify any construction invoice. The contractor's certification states the amount of the contractor's invoice is only for performance required by the contract and that the contractor has paid their subcontractors and suppliers from previous payments received and timely payments will be made from the proceeds of this payment. Additionally, the certification also states the amount of the invoice does not include any amounts the prime contractor is withholding or retaining from a subcontractor or supplier in accordance with the terms and conditions of the contract

Schedule of Prices



Review of Schedule of Prices

Subparagraph (b)(1)(i) of the Payments clause FAR 52.232-5 requires the Contractor to furnish a breakdown of the total contract price, showing the amount included for each principal category of work. This listing of prices is used to determine the appropriate payment amount based on progress completed.

Consult agency guidelines since different forms or formats for the submission of the schedule of prices might be required. Usually the Contracting Officer requests and approves the level of detail to be contained in the schedule of prices and this plus the payment clause works in conjunction with UFGS 01 20 00 00.

Itemization of Schedule of Prices

Regardless of agency specifics, the following items should be identified:

Total work should be broken down in logical elements (i.e., grading, laying utilities, foundations, etc.) and listed in proper sequence of accomplishment.

Percent value must be assigned to each element in relationship to the total contract price. The total of all elements must equal 100%.


The schedule must not be “front end loaded”. This could occur if a contractor attempts to place an excessive weight or value to the work that is to be accomplished early in the contract performance period in order to create an initial additional cash flow.

The Contracting Officer may approve the contractor’s mobilization or start-up costs if they are considered significant. If approved, demobilization costs must also be allowed, see DFARS 252.236-7003 and 252.236-7004.

Bond premium listed separately. The payments clause allows for payment of this item. Compare the rate listed on the bond premium with the rate listed on the Performance Bond Form. The price should be the same and expressed as a percentage of the premium.

With each invoice the contractor enters the actual percentage complete for each line item and forms the basis for progress payments.

Determining Progress



Determining Progress

- Agreement KTR/govt usually obtained PRIOR to submitting invoice
- For payment purposes, determine progress:
 - Schedule - bar/CPM charts (*TIMELINESS & PROGRESS*)
 - Daily records - QC/QA reports (*QUALITY*)
 - Progress meetings (*MGMT, ADMIN AND COOPERATION*)


Determining Progress

In accordance with subparagraph (b) of the Payments clause, the Contracting Officer will make progress payments based on estimates of the work accomplished that meets the standards prescribed in the contract.

Two items necessary in determining progress are the CPM or Bar Chart for work progress and QA and QC Reports for quality of workmanship. These documents need to be reviewed and discussed in detail at weekly progress meetings.

Once progress has been determined, it may be necessary to retain, withhold and/or assess liquidated damages against that invoice.

Retainage and Withholding


Retainage

- FAR 52.232-5(e)
- Satisfactory progress NOT made
 - Retain 10% MAX of progress payment until SAT progress
- When work substantially complete--
 - Retain amount to adequately protect govt
- Reason for retention
 - Behind schedule
 - Progress Schedule not submitted


Retainage

In accordance with subparagraph (e) of the Payments clause, if satisfactory progress has not been achieved, the contracting officer may retain a maximum of 10% of the amount of a progress payment until satisfactory progress is achieved. When the work is substantially complete, the amount to be retained should be enough to adequately protect the government.

Only when satisfactory progress is not being made, may the contracting officer retain any amounts allowed by the construction payments clause. That amount will be only 10%, unless there are other reasons as stated in the slide.

FAR 52.232-5

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.



Reasons for Withholding

- Failure to submit timely payrolls—amount to cover interests of govt and employees of KTR or subks
- Violations of dol requirements—amount equal to underpayment and lds due govt
- Unearned amounts—ktr deducts from subsequent invoice amount equal to total previously paid for nonconforming work, plus interest

Withholding

There may be instances when certain amounts may need to be withheld for the following reasons:

In accordance with FAR 22.406-6(b) and clause FAR 52-222-8, if the contractor fails to submit timely payrolls for itself and any subcontractors, the Contracting Officer shall withhold an amount large enough to cover the interests of the Government and the employees of the


contractor or any subcontractor.

In accordance with FAR 22.406-9 and clause FAR 52.222-7, if any payment violations of DOL required wages, fringes, and any overtime discrepancies occur or upon request of Department of Labor, the Contracting Officer shall withhold the amount equal to the underpayment and any liquidated damages due the Government.

Liquidated damages, found in clause FAR 52.211-12, must be withheld for any days, within the invoice period, beyond the contract completion date, considering all valid time extensions. If the construction project has been phased, verify if there are separate LD rates for each phase.

In accordance with subparagraph (d) of the Payments clause FAR 52.232-5, if the contractor discovers payment has been received for work that does not conform to the requirements of the contract then the contractor is required to notify the Government in writing. The contractor is also obligated to deduct from a subsequent invoice an amount equal to the total previously paid for the work, plus interest.

Since subparagraph (b) of the Payments clause only authorizes the Government to pay for conforming work, how could this situation of overpayment occur? One example might be the discovery of nonconforming work under the Inspection of Construction clause after payment has been made.



Non-payment Issues

- FAR 28.106-7
- Agencies shall not withhold payments to KTRs or assignees because SUBKs or Suppliers not paid
- Complaint Received From SUBK Or Supplier
 - Give Name & Address of Bonding Company
 - Payment Bond Number
 - Instruct SUBKs/Suppliers to Deal Directly With Bonding Company
 - Initiate Research Into Issue By (FAR 32.112-1)
 - Reviewing Previous Certified Invoices
 - Notifying Prime Contractor of any discrepancies and Encourage Timely Payment
 - Possibly Reducing or Suspending Progress Payments

Non-Payment Issues

In accordance with FAR 28.106-7, during performance agencies shall not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid.

Payment bonds were created to cover subcontractor and supplier nonpayment. The Bond Statue allows laborers and mechanics, subcontractors, and material

suppliers, who deal directly with the prime contractor, the right to sue on the prime contractor's payment bond, if payment is not received in full within 90 days after the date for which work was performed. This payment protection extends no further than the first two tiers of subcontractors.

In accordance with FAR 28.106-6, if the Government receives notification from a subcontractor or supplier that they have not been paid, the name and number of the bonding company that the prime has submitted to the Government should be given. The subcontractor/supplier should then be instructed to deal directly with the bonding company.

In accordance with FAR 32.112-1, after providing the name and number of the bonding company the Contracting Officer should –

Check certified invoices. Cross reference the allegation to information contained in the invoice since subparagraph (c)(2) of the Payments clause requires certified information pertaining to payments to all subcontractors, the amounts, any retainage or withholding, and the time of payment.

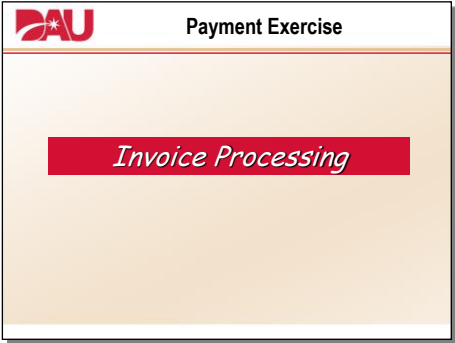
If a discrepancy is noted, notify the Prime contractor and encourage timely payment, if warranted.

If authorized by the Payments clauses, reduce or suspend progress payments.

If certification is inaccurate in any material respect, the Contracting Officer may initiate administrative or other remedial action.

If, after completion of the contract work, notification is received from the surety to withhold an amount then the Contracting Officer shall withhold final payment. Surety must guarantee Government is held harmless from liabilities resulting from withholding final payment. Final payment is made after notice from the surety of agreement between themselves and the prime contractor or by judicial judgment.

Payment Exercise



This is a group exercise. The information is found on Blackboard, Lesson 7.

Teams are to identify the total payment amount authorized, the withholding or retention required and justify the team’s position based on a contract clause.

Invoice Exercise			
Teams	Total Payment Authorized	Retention & Reasons	Withholdings & Reasons
Team 1			
Team 2			
Team 3			
Team 4			
Team 5			
DAU Recommendation			

Project Completion

DAU Project Completion & Closeout
<ul style="list-style-type: none"> • Punchlists • Beneficial occupancy • Warranties • Transfer of construction • Performance evaluations • Contract close-out

Construction Contract Project Completion

Everything discussed to this point in the course has been centered on managing the construction contract and insuring project progress. Now the process will focus on those unique construction aspects of project completion and closeout.

These are the construction specific issues involved with closeout we will be discussing further.

DAU Punchlist
<ul style="list-style-type: none"> • Completed during pre-final inspection as govt and KTR “walk through” project • List items that do <u>not</u> conform to specifications - usually minor in nature • Requires correction <u>prior to acceptance and final payment</u> • Sample, Student Guide, pgs 7-19/20

Punchlists

The Inspection of Construction Clause allows the Government to inspect already completed work before accepting an entire facility. Historically, when a project nears completion, the Contractor will notify the Contracting Officer, in writing, when they consider themselves finished with the construction project. At that time, a pre-final inspection may be held, where the Government and the Contractor “walk through” the

project and a punchlist is completed. A typical formal walk through may include the following personnel:

- Contracting Officer
- Government technical inspection personnel
- Contractor personnel
- Using agency representatives
- Local agency representation, such as fire, safety, security, etc. Operations and maintenance personnel
- Subcontractor personnel
- A/E or project designer.

The punchlist will contain any items that do not conform to the contract requirements and require correction prior to acceptance but definitely prior to final payment. The punchlist items are usually minor in nature, such as, dents in ductwork or painting touchups. More detailed information can be found at UFGS SECTION 01 45 00.00 paragraph 3.8.

Punchlists, Continued**SAMPLE PUNCHLIST**

DEPARTMENT OF THE NAVY
 RESIDENT OFFICER IN CHARGE OF CONSTRUCTION
 1195 MILL ROAD
 NCBC, PORT HUENEME, CALIFORNIA 93043-4347

FINAL INSPECTION REPORT**1. Contract Data:**

- a. Project Title: Various Repairs & Alterations to Building 560
- b. Contract No: DA0000-XX-C-4870
- c. Contractor: ACE Construction Company
- d. Location: PHD NSWC Bldg 560
- e. Date of Inspection: 20 May 1997
- f. Date of UCD: 20 May 1997

2. Attendee:

- a. Government Contracting Officer
- QA Inspector
- Customer Representative
- b. Contractor ????????????????????
- ???????????
- ??????????????

3. Contract Submittals:

- a. As-Built Drawings Still Needed
- b. O & M Drawings Still Needed
- c. Testing Reports Still Needed

4. Construction Deficiencies (listed below or on attached punchlist)

- 1. insulate duct on c.r. 3 & U
- 2. finish insulating ductwork for conference rooms 1 & 2

Contractor Signature _____

ROICC Signature _____

Continued on next page


Punchlists, Continued

SAMPLE PUNCHLIST

- 3) RELOCATE EF-2 SWITCH TO RM A101-B VICE RM A101.
 - 4) SEAL DUCT PROPERLY AT ROOM A100-3, LEAKS
 - 5) PROVIDE INSULATION ON REFRIGERANT LINE, RM C-100
 - 6) PROVIDE SECURITY BARS ON OUTSIDE AIR LOUVER, RM C
 - 7) REPLACE PLASTIC DRAIN LINE WITH COPPER, RM 10-1
 - 8) SEAL DUCT PROPERLY AT ROOM A10-3, LEAKS
 - 9) CAP OFF PNEUMATIC AIR LINE RM A10-3
 - 10) REMOVE PNEUMATIC THERMOSTAT LINE PASSING THRU WALL AT ROOM A10-3
 - 11) DOOR CLOSURE AT ROOM A263-B, MISSING
 - 12) CUT OFF EXCESS ROOF INSULATION RM A263-A
 - 13) UNFINISHED DUCT INSULATION RM A263-A & RM A2
 - 14) ROOM 250, PROVIDE LOCK DEVICE ON E. PANEL, M. PROVIDE SPECIAL SOCKET TO REMOVE BREAKER CON
 - 15) PIECES OF CONCRETE LYING ON FIBER CEILING TILES, NEEDS CLEANING RM C200-1
 - 16) CHANGE ^{SWITCH} LABEL AT ROOM A209-A TO READ EXHAUST FA
 - 17) EQUIPMENT LABEL FOR CU-8 SHD. READ READ CU NOT CRU-8
 - 18) PROVIDE EXTRA SUPPORT ON DRAIN LINE FOR CRU-5
 - 19) EQUIPMENT LABEL FOR CU-6 SHD. READ CU-6 NOT CRU-6
- * ELEVATE ALL ELECTRICAL CONDUITS & ALL WIRES OFF THE CEILING TILES.

NO FURTHER ENTRY
1/2/01

Beneficial Occupancy


Use & Possession Prior to Completion


- FAR 52.236-11
 - Commonly known As “Beneficial Occupancy”
 - Govt has right to occupy any completed to partially completed part of work prior to final acceptance
 - Notify ktr in writing
 - All risk of project on government (except latent defects or fraud)

Use and Possession Prior to Completion

In accordance with FAR Clause 52.236-11, Use and Possession Prior to Completion, the Government has the right to occupy a building prior to final acceptance. This period is referred to as beneficial occupancy and the Contracting Officer must notify the contractor, in writing, when that occupancy occurs.

If the Government does take beneficial occupancy, except for latent defects or fraud, all risk of the project falls on the Government. During this period extreme care must be exercised not to alter, repair or change in any way the facility or any equipment therein. If any occurs, it may alter the Contractor’s and Government’s rights under the contract clauses for warranty and inspection.

Warranty


Warranty Of Construction

- FAR 52.246-21
- Ktr required to warrant all work conforms and free of defect
 - Provides all warranty info to govt
 - One year from final acceptance or one year from possession
 - Notify ktr within reasonable time of discovering warranty issue
 - Ktr required to correct situation
 - Ktr required to supply all commercial warranties of any component of project to KO in writing

Warranty

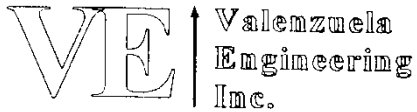
In accordance with FAR clause 52.246-21, Warranty of Construction, the contractor is required to warrant that all work performed conforms to the contract requirements and is free from any defect in equipment, material, or design furnished, or workmanship performed by the contractor or any subcontractor or supplier at any tier.

Subparagraph (b) of the clause states the warranty shall continue for a period of one year from the date of final acceptance of the work. If the Government takes possession of any part of the work prior to final acceptance, the warranty shall be for 1 year from the date the Government takes possession.

Subparagraph (e) states the Contracting Officer shall notify the contractor within a reasonable time after discovery of any warranty issue. The contractor is then required, if the warranty is still in effect, to correct the situation. This requirement flows down through all subcontractor/supplier tiers.

Subparagraph (g) requires the contractor to supply all commercial warranties, in writing, of any component of the construction project to the Contracting Officer.

Sample Warrant Letter from Contractor



(305) 349-2311 • FAX (305) 349-3311 • P.O. Box 2549 • Santa Maria, California 93457

NV051PTH-01

December 4, 1996

ROICC
1195 MILL RD
PORT HUENEME, CA 93043

RE: BLDG 1387 AIC COMPUTER SPACES
N47408-96-B-5002
PORT HUENEME CALIFORNIA

ATIN: LARRY TAN

SUBJECT: 10 YEAR WARRANTY ON INDOOR UNITS

Mr. Tan:

This letter is to confirm Valenzuela Engineering's intent to provide a (10) year warranty, on corrosion of casings, on all Data Aire AC/Equipment located indoors of BLDG #1387. This warranty includes labor and material for replacement of any or all equipment casings that show signs of corrosion.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walt Brundy", with a long, sweeping horizontal line extending from the end of the signature.

Walt Brundy
Project Manager

Sample Warrant Letter to Government



DEPARTMENT OF THE NAVY
OFFICER IN CHARGE OF CONSTRUCTION RESIDENT
OFFICER IN CHARGE OF CONSTRUCTION
ENGINEERING FIELD ACTIVITY WEST, NAVAL FACILITIES ENGINEERING COMMAND CONTRACTS
POINT MUGU-PORT HUENEME
1195 MILL ROAD
PORT HUENEME, CALIFORNIA 93042-5031

IN REPLY REFER TO:
4330
Ser: 54GN2877
04 February 1998

From: Resident Officer in Charge of Construction, Point Mugu-Port Hueneme Area
To: Commanding Officer, Naval Construction Battalion Center, Port Hueneme, CA

Subj: CONTRACT N62474-95-C-2877, WHOLEHOUSE REPAIRS/IMPROVEMENTS TO 104 UNITS IN BRUNS PARK HOUSING AREA (PHASE II) AT THE NAVAL CONSTRUCTION BATTALION CENTER, PORT HUENEME, CA


1. Housing Unit 955E has been accepted on 22 January 1998 and Housing Units 955A, 955B, 955C, and 955 D, have been accepted on 104 February 1998. These dates mark the beginning of the one year warranty period. The warranty generally covers defects in project material and workmanship which can be attributed to the contractor.
2. If any of the contract work proves to be deficient during this one year period, please contact the Public Works Trouble Desk immediately, at 982-4544, and reference the subject contract number. Warranty liability by the contractor will be determined by the Public Works Department upon initial notification and review of the complaint.
3. The responsibility for maintenance and security of the project now rests with the using activity. Inadequate maintenance and significant modifications to the facility may void the contractor's warranty.

-f;Jk

Resident Engineer in
Charge of Construction
By Direction

Copy to:
CBC Public Works, Code 82
CBC Housing Officer, Code 83
Julie Amaba, Housing Dept.
Ken Bergman, Housing Dept.

Project Turnover


Transfer Of Construction

- **No FAR/DFAR**--Check Agency Procedures
- In **Writing** and Provide At Least
 - All O&M Manuals, Diagrams, Piping Layouts, Etc.,
 - List of Equipment Covered by Warranty
 - Copies of Warranty Documents
 - Copies of Test Results for Mech & Elect Systems and/or Equipment
 - All Specialized Keys, Handles, Tools
- **Sample Turnover Letters, Pgs. 7-26/27**

Transfer of Construction

Since there is no specific FAR or DFARS guidance concerning the transfer of a completed project to the user, check agency procedures concerning proper transfer.

For most agencies, the transfer must be in writing and should provide at least the following information.

- All operating and maintenance manuals,
- Wiring diagrams,
- Piping layouts,
- Valve charts,
- Valve tags,
- Color codes for wiring and piping,
- Spare parts catalog.
- List of equipment covered by warranty under the terms and conditions of the contract.
- Copies of all warranty documents.
- Copies of test results for mechanical and electrical systems and/or equipment.
- All specialized keys (tagged), handles, and tools.

Sample Turnover Letter to the Contractor

DEPARTMENT OF THE NAVY
OFFICER IN CHARGE OF CONSTRUCTION RESIDENT OFFICER IN CHARGE OF
CONSTRUCTION
ENGINEERING FIELD ACTIVITY WEST, NAVAL FACILITIES ENGINEERING COMMAND
CONTRACTS POINT MUGU-PORT HUENEME
1195 MILL ROAD
PORT HUENEME,CALIFORNIA 93042-5031

IN REPLY REFER TO:

4330

Ser: 54GA/2877

04 February 1998

Selco, Inc.
5705 Perkins Road
Oxnard, CA 93033

Subj: CONTRACT N62474-95-C-2877, WHOLEHOUSE REPAIRS/IMPROVEMENTS TO 104
UNITS IN BRUNS PARK HOUSING AREA (PHASE II) AT THE NAVAL CONSTRUCTION
BATTALION CENTER, PORT HUENEME, CA

Gentlemen,

This confirms that the Government declares the housing unit 955 E as usably complete on 22
January 1998 and units 955 A, 955 8, 955 C, and 955 D as usably complete on 04 February
1998.

The above mentioned dates signify acceptance of the contract work on those units by the
government and commencement of the contractor's one (1) year warranty period, as specified in
FAR 52.246.21, WARRANTY OF CONSTRUCTION (APR 1984), for the aforementioned units.

You will be notified by the Public Works Department, Director, Facilities Management Division, at
(805) 982-4531, if any discrepancies are discovered during the warranty period.

If you have any questions, feel free to call me at (805) 982-3698, or LT Glenn Albrecht at (805)
982-3691.

Copy to:
CBC Public Works Code 82
CBC Housing Officer Code 83
Julie Amaba, Housing Dept
Ken Bergman, Housing Dept

Resident Engineer
Charge of Construction

Sample Turnover Letter to the Government

DEPARTMENT OF THE NAVY
OFFICER IN CHARGE OF CONSTRUCTION RESIDENT OFFICER IN CHARGE OF
CONSTRUCTION
ENGINEERING FIELD ACTIVITY WEST, NAVAL FACILITIES ENGINEERING COMMAND
CONTRACTS POINT MUGU-PORT HUENEME
1195 MILL ROAD
PORT HUENEME,CALIFORNIA 93042-5031

IN REPLY REFER TO:
4330
Ser: 54GN2877
04 February 1998

MEMORANDUM FOR FACILITIES MANAGEMENT DIVISION HEAD, PUBLIC WORKS
DEPARTMENT, NAVAL CONSTRUCTION BATTALION CENTER, PORT HUENEME,
CALIFORNIA (CODE 82)

Subj: CONTRACT N62474-95-C-2877, WHOLEHOUSE REPAIRS/IMPROVEMENTS TO 104
UNITS IN BRUNS PARK HOUSING AREA (PHASE II) AT THE NAVAL CONSTRUCTION
BATTALION CENTER, PORT HUENEME, CA

1. The warranty period for 955 E commenced on 22 January 1998 and the warranty period for 955 A, 955 B, 955 C, and 955 D commenced on 04 February 1998.
2. The contractor's information is: Selco, Inc.
5705 Perkins Road
Oxnard, CA 93033

(805) 382-0602
POC: Mr. Jim Heil

3. Our POC is LT Glenn Albrecht, Code 54GA, Ext. 2-3691.

Copy to:
CBC Housing Officer Code 83
Julie Amaba, Housing Dept. Ken Bergman, Housing Dept.

Resident Engineer in
Charge of Construction

DAU Performance Evaluations
<ul style="list-style-type: none"> • FAR 36.201 - refers back to FAR 42.1502 (e) <ul style="list-style-type: none"> – Performance evaluation on all construction contracts more than \$650K, – All construction contracts terminated regardless of value. • FAR subpart 42.15 <ul style="list-style-type: none"> – Requires annual evaluations be completed – CPARS categories + Safety – Evaluations definitions FAR 42.1503 Table 42-1 – A/E evaluation after completion of construction

Performance Evaluations

Depending on agency guidelines, Contracting personnel or technical representatives may be utilized in preparing the evaluation. However, performance evaluations should be reviewed by a Government official who is knowledgeable of the contractor's performance on the project and this official should be one organizational level above the evaluator.

FAR 42.1502(a) General. Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

(e) Past performance evaluations shall be prepared for each construction contract of \$650,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$650,000.

(f) Past performance evaluations shall be prepared for each architect-engineer services contract of \$30,000 or more, and for each architect-engineer services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$30,000.

A copy of the performance evaluation report is entered into the Contractor Performance Assessment Reporting System (CPARS) central database **at least annually**. For example, if you have a construction contract that has a performance period of 1,245 days (3 years, 5 months) you will be required to complete 4 performance evaluations. 3 during construction and 1 at completion.

CPARS categories are:

- Quality
- Schedule
- Cost Control
- Management
- Utilization of Small Business
- Regulatory Compliance
- Other Evaluation Area (1) – See attachments to this ECB for required information

- h. Other Evaluation Area (2) – Optional
- i. Other Evaluation Area (3) – Optional

CPARS has multiple web-based training modules available for users located at:
<http://www.cpars.gov/allapps/cpcbtdlf.htm>.

The following can be utilized as format in evaluating a typical construction contractor in CPARS:

1. Evaluation Areas. This area outlines mandatory performance elements to be included in assessments for Construction Contractors to include Design-Build contracts. The main categories listed (A-I) are fixed elements within the Contractor Performance Assessment Reporting System (CPARS). In construction contract assessments safety is a critical aspect and is rated as a standalone element. Each narrative will be individually rated using Exceptional, Very Good, Satisfactory, Marginal, Unsatisfactory, or N/A. The overall rating will be selected from a range of (would/would not) recommend.

A. Quality. This narrative should reflect the contractor's management of the quality control program, the quality of the work itself, and the product performance outlined in the contract's quality objectives. Factors to consider:

- i. Adequacy and implementation of Contractor's Quality Control Plan
- ii. Contractor's ability to maintain quality control and accuracy of QC documentation
- iii. Implementation of the 3-phase inspection process
- iv. Quality of workmanship
- v. Work is in accordance with the plans and specifications

B. Schedule. This narrative should assess the timeliness of the Contractor against the required completion date of the contract, milestones, delivery schedules, and administrative requirements. Factors to consider:

- i. Quality and timeliness of the initial schedule submission
- ii. Adherence to the approved schedule
- iii. Communication and submittal of schedule revisions
- iv. Corrective action taken by the Contractor when schedule has slipped through fault of Contractor

C. Cost Control. This rating area may be rated N/A for fixed-price contracts. Factors to consider for cost-type contracts:

- i. Were the Contractor's billings current, accurate, and complete?
- ii. Are the Contractor's budgetary internal controls adequate?
- iii. Was innovation used that resulted in cost savings?

D. Management. The management narrative should reflect the Contractor's internal and external day-to-day business operations as they relate to meeting contract requirements. Factors to consider:

- i. Management of resources and key personnel
- ii. Coordination and control of subcontractor(s)

- iii. Review and resolution of subcontractor's issues
- iv. Management responsiveness

E. Utilization of Small Business. This category may be rated N/A for small business contracts. This area must be rated for all contracts and task orders that contain a small business subcontracting plan. Assess compliance with all terms and conditions in the contract relating to Small Business participation. Factors to consider:

- i. Compliance with Federal Acquisition Regulation (FAR) 52.219-8, Utilization of Small Business
- ii. Compliance with FAR 52.219-9, Small Business Subcontracting Plan
- iii. Contractor's good faith effort(s) to meet contract goals and requirements

F. Regulatory Compliance. This rating area shall focus on environmental and labor laws and regulations. Safety regulations shall be addressed in item (G.) below. Factors to consider:

- i. Contractor's enforcement of laws and regulations
- ii. Correction of deficiencies when out of compliance
- iii. Communication of laws and regulations to subcontractor(s)
- iv. Compliance with the Davis-Bacon Act

G. Other Evaluation Area (1). This narrative is for Construction Contracts to be named "**Safety.**" Safety factors to consider:

- i. Adequacy of Contractor's Safety Plan
- ii. Implementation of Safety Plan
- iii. Identification and correction of safety deficiencies
- iv. Quantitative evaluation of accidents and injuries

H. Other Evaluation Area (2). This narrative is not mandatory and can be used at the discretion of the local Assessing Official.

I. Other Evaluation Area (3). This narrative is not mandatory and can be used at the discretion of the local Assessing Official.

2. Evaluation Ratings Definitions. Reference FAR 42.1503 Table 42-1 for revised evaluation rating definitions. A simplified version of the table is provided here:

Rating	Contract Requirements	Problems	Corrective Action
Exceptional	Exceeds Many - Gov't Benefit(s)	Few Minor	Highly Effective
Very Good	Exceeds Some - Gov't Benefit	Some Minor	Effective
Satisfactory	Meets All	Some Minor	Satisfactory
Marginal	Does Not Meet Some – Gov't Impact	Serious: Recovery Still Possible	Marginally Effective; Not Fully Implemented
Unsatisfactory	Does Not Meet Most – Gov't Impact	Serious: Recovery Not Likely	Ineffective

Depending on how involved the A/E firm was in the construction process or if there were any major design issues that surfaced during construction, the Government may also evaluate the A/E firm responsible for the design after construction has been completed.

CPARS Example Form:


<p>FOR OFFICIAL USE ONLY / SOURCE SELECTION INFORMATION - SEE FAR 2.101, 3.104, AND 42.1503</p> <p align="center">CONTRACTOR PERFORMANCE ASSESSMENT REPORT (CPAR)</p> <p>Name/Address of Contractor (Division): Company Name: Division Name: Street Address: City: State: Zip Code: Country: DUNS Number: PSC: NAICS Code: Evaluation Type: Contract Percent Complete: Period of Performance Being Assessed: Contract Number: Business Sector & Sub-Sector: Contracting Office: Contracting Officer: Phone Number: Location of Work:</p> <p>Award Date: Effective Date: Completion Date: Actual Completion Date: Total Dollar Value: Current Contract Dollar Value: Complexity: Termination Type: Competition Type: Contract Type: Key Subcontractors and Effort Performed: DUNS: Effort:</p> <p>DUNS: Effort:</p> <p>DUNS: Effort:</p> <p>Project Number: Project Title:</p> <p>Contract Effort Description:</p>	<p>FOR OFFICIAL USE ONLY / SOURCE SELECTION INFORMATION - SEE FAR 2.101, 3.104, AND 42.1503</p> <p>Small Business Utilization: Does this contract include a subcontracting plan? Date of last Individual Subcontracting Report (ISR) / Summary Subcontracting Report (SSR):</p> <table border="1"> <thead> <tr> <th>Evaluation Areas</th> <th>Past Rating</th> <th>Rating</th> </tr> </thead> <tbody> <tr> <td>Quality:</td> <td></td> <td></td> </tr> <tr> <td>Schedule:</td> <td></td> <td></td> </tr> <tr> <td>Cost Control:</td> <td></td> <td></td> </tr> <tr> <td>Management:</td> <td></td> <td></td> </tr> <tr> <td>Utilization of Small Business:</td> <td></td> <td></td> </tr> <tr> <td>Regulatory Compliance:</td> <td></td> <td></td> </tr> <tr> <td>Other Areas:</td> <td></td> <td></td> </tr> <tr> <td>(1) :</td> <td></td> <td></td> </tr> <tr> <td>(2) :</td> <td></td> <td></td> </tr> <tr> <td>(3) :</td> <td></td> <td></td> </tr> </tbody> </table> <p>Variance (Contract to Date): Current Cost Variance(%) Completion Cost Variance(%) Current Schedule Variance(%) Completion Schedule Variance(%)</p> <p>Assessing Official Comments: ADDITIONAL/OTHER:</p> <p>RECOMMENDATION: Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would recommend him for similar requirements in the future.</p> <p>Name and Title of Assessing Official: Name: Title: Organization: Phone Number: Email Address: Date:</p> <p>Contractor Comments: ADDITIONAL/OTHER:</p> <p>CONCURRENCE:</p> <p>Name and Title of Contractor Representative:</p>	Evaluation Areas	Past Rating	Rating	Quality:			Schedule:			Cost Control:			Management:			Utilization of Small Business:			Regulatory Compliance:			Other Areas:			(1) :			(2) :			(3) :		
Evaluation Areas	Past Rating	Rating																																
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(1) :																																		
(2) :																																		
(3) :																																		

Contract Closeout

Contract Closeout

Policy and procedures for the closeout of physically completed contracts are contained in FAR 4.804 and DFARS 204.804. Retention periods are as follows:

- Signed originals of construction contracts over \$2,000 - 6 years and 3 months after final payment


Contract Closeout

- Closeout policies and procedures in FAR 4.804 and DFARS 204.804
- Retention periods for contract documentation
 - Construction over \$2,000:
6 years and 3 months after final payment
 - Construction \$2,000 OR LESS:
3 years after final payment
 - Payroll information: 3 years
 - Contracts with environmental issues:
contact cognizant environment office for guidance
- Sample completion checklist, SG, pgs 7-33/34

- Signed originals of construction contracts \$2,000 or less - 3 years after final payment

If a construction contract includes environmental issues, such as, the removal of hazardous soils, materials, waste, asbestos, lead paint, coordinate with the cognizant organizational Environmental Division for additional records retention requirements.

SAMPLE COMPLETION CHECKLIST

AWARD DATE _____
 CCD _____
 UCD _____

CONTRACT _____

**ROICC CONTRACT COMPLETION
 CHECK LIST I. AROICC RESPONSIBILITIES**

A. Before Final Acceptance

1. Pre-Final Inspection _____
 2. Fire Protection Inspection _____
 3. BOD/Usable Completion Date _____
 4. Final Inspection (Contr/PW/User) _____
 5. Final Completion Date (Punch List) _____
 6. Release Letter to Activity _____
 7. Completion Letter to Contractor _____
 8. Operating Tests Performed and Witnessed _____
 9. Training Sessions Scheduled and User _____
- Notified _____

B. Before Final Release

1. List of Warranty Agents to PW/Customer _____
2. As-builts Provided and Accepted (2 sets) _____
3. Manual to PW _____
4. Shop Drawings to PW _____
5. Keys to PW/User _____
6. Spare Parts to PW _____
7. GFE/GFM Accounted for _____
8. Salvage Material Turned In _____
9. Determine Status of Utility Bill _____
10. All Claims Settled _____
11. All Change Orders Finalized _____
12. Liquidated Damages assessed (if applicable) _____
13. All Quality Control Deficiencies Corrected _____

C. Before Closing Out File

1. Property Records Forms to EFD
(NAVFAC 11010/29A, B, C or DD 1354) _____
2. Final Progress Photo _____
3. Contractor Evaluation to EFD (DD 1596) _____
4. A/E Evaluation to EFD (SF 1421) _____
5. As-Builts to EIC _____
6. Schedule of Prices to _____.

INSPECTOR'S RESPONSIBILITIES

A. Before Final Acceptance

1. Schedule Pre-Final Inspection _____

SAMPLE COMPLETION CHECKLIST

2. Review Construction Compliance Notices _____
3. Review Plans for Submittals Due at Turnover _____
4. Fire, Boiler and Elevator Inspections _____
5. Electrical/Mechanical Systems Tests _____
6. Tag Warranty Equipment _____
7. Final Inspection Punch List _____
8. Framed Instruction/Warranties Mounted _____
9. All Tests Results and Certifications Received _____
10. User Training Has Been Completed _____

B. Before Final Release

1. All Punch Lists Finished _____
 2. Contractor's Passes Returned _____
 3. Review As-Builts for Completeness _____
 4. Verify All Change Order Work Done _____
 5. Final Demobilization and Job Site Clean _____
- Up Completed

C. Before Closing out file

1. Rough Equipment and Property Cards to AROICC _____
 2. Take Final Progress Photos _____
 3. Provide Inspector's Copies of Submittals to _____
- PW after Insuring ROICC File is Complete

III. CONTRACT SPECIALIST

RESPONSIBILITIES A. Before Closing Out File

1. Originate Liquidated Damages Assessment _____
 2. Payrolls Complete _____
 3. Statement of Payroll Compliance with Final _____
- Payment
4. Originate Contractor Evaluation (CCASS) _____
 5. Final Release Received _____
 6. Final Payment Processed _____
 7. Excess Funds Returned to Customer _____
 8. All Change Orders Executed _____
 9. Acceptance Letters Received From Activity _____

Contract _____

Checklist reviewed _____

Date

Signature


Close-out recommended _____

Date

Signature

Approved _____

Summary


Summary....

- Should Bond Premiums Be Listed Separately on the Schedule of Prices?
- When Does the Government Retain?
- When Does the Government Withhold?
- What Can be Done When SUBK Alleges Non-Payment?

Construction Contracting Conclusion

This course has presented the unique aspects of construction contracting. The procedures from acquisition planning through contract closeout are governed by the FAR and DFARS. The nature of construction will sometimes mean there may be situations where good construction business practices must be applied. With any request for construction contracting, contracting personnel will properly

prepare, issue, award, and administer construction contracts that will meet the customer's needs.

Discussion Questions

Should bond premiums be listed separately on the schedule of prices?

When does the Government retain?

When does the Government withhold?

What can be done when SUBK alleges non-payment?



Course Summary

- **Lesson 1: Perspectives**
- **Lesson 2: Acquisition Planning**
- **Lesson 3: Solicitation Process**
- **Lesson 4: Evaluation & Award**
 - Exercise: Bid Analysis – Determine Award
 - Exercise: Performance & Payment Bonds Review
- **Lesson 5: Contract Admin (Compliance)**
 - Exercise: Payroll Review/Construction Wage Rate
 - Exercise: Scheduling
- **Lesson 6: Contract Admin (Changed Conditions)**
 - Modification Case
- **Lesson 7: Invoices, Payments, and Closeouts**
 - Exercise: Invoice Processing
- **Issue Analysis: Job-related; Group MACRO**